

SUPERIOR COURT  
of the  
State of Delaware

William L. Witham, Jr.  
Resident Judge

Kent County Courthouse  
38 The Green  
Dover, Delaware 19901  
Telephone (302) 739-5332

Submitted: March 11, 2015

Decided: March 13, 2015

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Re: *State of Delaware v. Deangelo McGlotten*  
I.D. No. 1407020198  
Defendant's Motion to Disclose Confidential Informant- Denied.

Dear Counsel:

This is the Court's decision on Defendants' request for a *Flowers* hearing. As the parties are well-aware, a criminal defendant does not have an unqualified right to discover the identity of government informants. *State v. Flowers*, Del. Supr., 316 A.2d 564 (1973). Under Delaware Rule of Evidence 509(a), the identity of the informant is privileged. However, Rule 509(c) provides an exception in cases where the informer's testimony will materially aid the defense. If it appears that an informant may be able to give testimony which would materially aid the defense, and the State invokes the privilege, the Court shall give the State an opportunity to show *in camera*

facts relevant to determining whether the informer can supply the alleged testimony.

Ultimately, it is the defendant's responsibility to show, "beyond mere speculation, that the confidential informant may be able to give testimony that 'would materially aid the defense.'" *Hooks v. State*, Del. Supr., 612 A.2d 158. In *Hooks*, a confidential witness to a drug transaction did not have to be revealed because it was mere speculation on the part of the defense that the State's witness would have given exculpatory information. Moreover, in *State v. Brown*, Del. Supr., 608 A.2d 725 (1992), the Delaware Supreme Court held that

[a]lthough Brown alleges that he was 'set up' by Paulette Corea, there is nothing in the record to support Brown's contention that the identity of the confidential informant would have materially aided him in proving this defense. Even assuming arguendo that Brown's speculation about the identity of the confidential informant was correct, that fact alone was not a sufficient reason for the Superior Court to require disclosure of the informant's identity. *See Preston v. State*, Del. Supr., 338 A.2d 562, 563 (1975). The Superior Court in this case carefully considered the testimony of the confidential informant and determined, in its discretion, that the disclosure of the identity of the confidential informant would not materially aid Brown's defense. *State v. Flowers*, Del. Supr., 316 A.2d 564 (1973); D.R.E. 509(b). The record does not reflect that the Superior Court abused its discretion. *Id.*

In the case at bar, the State responded in opposition to the motion. The State's response makes it clear that the confidential informant (CI) provided information that the Defendant would be driving a "silver Jeep Wrangler", that it was a "rental", that he would be operating [the vehicle] in the vicinity of TGI Fridays, and that he would be in possession of heroin. The CI did not participate other than to lead police to the site. At no time did the CI take part in any transaction, but merely told the police that

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the Defendant would be present at the location.

Under *Flowers* and its progeny, if the confidential informant was not an active participant, his identity does not have to be disclosed by the State. The confidential informant only pointed out to the police where the Defendant would be and that he would be in possession of an illegal substance. This amount of involvement by the CI does not rise to a level that would require the disclosure of his identity. The Defendant has failed to meet this burden of showing that the confidential informant may be able to give testimony which would materially aid his defense. Therefore, it would not be proper for this Court to disclose the identity of the confidential informant at this time. Defendant's *Flowers* motion is ***denied***.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.  
Resident Judge

WLW/dmh

oc: Prothonotary

xc: Gregory R. Babowal, Esquire

Eric G. Mooney, Esquire

File